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DAVID GUCWA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACEBOOK, INC., and MARK ZUCKERBERG,

Plaintiff,

v.

CONNECTU, INC. (formerly known as CONNECTU, LLC), CAMERON WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA, PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA AND DOES 1-25,

Defendants.

Case No. C 07-01389-RS

DEFENDANT DAVID GUCWA'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT FOR VIOLATION OF CALIFORNIA PENAL CODE § 502(C); CALIFORNIA AND MASSACHUSETTS COMMON LAW MISAPPROPRIATION/UNFAIR COMPETITION; VIOLATION OF MASSACHUSETTS GENERAL LAW 93A; 18 U.S.C. § 1030; AND 15 U.S.C. §§ 7704 AND 7705

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Defendant David Gucwa ("GUCWA"), by and through his attorneys, hereby answers Plaintiffs' Second Amended Complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 1 and therefore denies them.

2. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies them.

3. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 3 and therefore denies them.

4. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 4 and therefore denies them.

5. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 5 and therefore denies them.

6. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 6 and therefore denies them.

7. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 7 and therefore denies them.

8. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 8 and therefore denies them.

9. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 9 and therefore denies them.

10. GUCWA admits he is a citizen of the state of Massachusetts. GUCWA denies the balance of the allegations of Paragraph 10 in the Second Amended Complaint.

11. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 11 and therefore denies them.

12. GUCWA denies the allegations of Paragraph 12.

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GENERAL ALLEGATIONS

A. Mark Zuckerberg

13. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 13 and therefore denies them.

B. Facebook

14. GUCWA denies that he was aware that www.facebook.com operated from California during all relevant times outlined in the Second Amended Complaint. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 14 and therefore denies them.

15. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 15 and therefore denies them.

16. GUCWA denies the allegations of Paragraph 16.

17. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 17 and therefore denies them.

18. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 18 and therefore denies them.

19. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 19 and therefore denies them.

20. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 20 and therefore denies them.

21. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies them.

22. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 22 as they concern Cameron and Tyler Winklevoss, Divya Narendra, Winston Williams or Wayne Chang, and therefore denies them. To the extent the remaining allegations in Paragraph 22 are directed toward GUCWA, GUCWA denies them.

23. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 23 as they concern Cameron and Tyler Winklevoss, Divya

Narendra, Winston Williams or Wayne Chang, and therefore denies them. To the extent the remaining allegations in Paragraph 23 are directed toward GUCWA, GUCWA denies them.

B[sic]. Unauthorized Access, Misappropriation, and Commercial Use by Defendants

24. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 24 and therefore denies them.

25. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 25 and therefore denies them.

26. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 26 as they concern ConnectU, its "founders", Pacific Northwest Software, Inc., Winston Williams or Wayne Chang, and therefore denies them. To the extent the remaining allegations in Paragraph 26 are directed toward GUCWA, GUCWA denies them.

27. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 27 and therefore denies them.

28. GUCWA denies that he was engaged to develop a computer program by Cameron Winklevoss or Tyler Winklevoss. GUCWA admits working with Pacific Northwest Software, Inc., Winston Williams and Wayne Chang, which work eventually led to a computer program concerning www.thefacebook.com. To the extent the remaining allegations are directed toward Cameron and Tyler Winklevoss, Divya Narendra, Winston Williams, Wayne Chang, PNS and ConnectU, GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 28 and therefore denies them. To the extent the remaining allegations in Paragraph 28 are directed toward GUCWA, GUCWA denies them.

29. GUCWA admits that Wayne Chang provided him with information allowing access to www.thefacebook.com that was provided to Mr. Chang by others. GUCWA admits that Mr. Chang used the phrase "cat and mouse" in correspondence with GUCWA, and that Mr. Chang also wrote that Facebook was "run by a techie." GUCWA admits that he assisted in writing a computer program concerning www.thefacebook.com. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the balance of the allegations of

Paragraph 29 and therefore denies them.

30. To the extent any of the allegations in Paragraph 30 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 30 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies them.

31. To the extent any of the allegations in Paragraph 31 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 32 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies them.

32. To the extent any of the allegations in Paragraph 32 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 32 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies them.

33. To the extent any of the allegations in Paragraph 33 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 33 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies them.

34. To the extent any of the allegations in Paragraph 34 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 34 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies them.

35. To the extent any of the allegations in Paragraph 35 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 35 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies them.

36. To the extent any of the allegations in Paragraph 36 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 36 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to

the truth of these allegations and therefore denies them.

37. To the extent any of the allegations in Paragraph 37 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 37 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies them.

38. To the extent any of the allegations in Paragraph 38 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 38 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies them.

39. GUCWA denies the allegations of Paragraph 39.

40. GUCWA denies the allegations of Paragraph 40.

41. To the extent any of the allegations in Paragraph 41 are directed toward GUCWA, GUCWA denies them. To the extent any of the allegations of Paragraph 41 are not directed toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to the truth of these allegations and therefore denies them.

42. GUCWA denies the allegations of Paragraph 42.

43. GUCWA denies the allegations of Paragraph 43.

44. GUCWA denies the allegations of Paragraph 44.

45. GUCWA denies the allegations of Paragraph 45.

FIRST CAUSE OF ACTION

(Violation of California Penal Code § 502(c) - Against All Defendants)

46. GUCWA incorporates by this reference his answers to Paragraphs 1 through 45 above.

47. GUCWA denies the allegations of Paragraph 47.

48. GUCWA denies the allegations of Paragraph 48.

49. GUCWA denies the allegations of Paragraph 49.

50. GUCWA denies the allegations of Paragraph 50.

51. GUCWA denies the allegations of Paragraph 51.

SECOND CAUSE OF ACTION

(Common Law Misappropriation/Unfair Competition under Massachusetts and California Law - Against All Defendants)

52. GUCWA incorporates by this reference his answers to Paragraphs 1 through 51 above.

53. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 53 and therefore denies them.

54. GUCWA denies the allegations of Paragraph 54.

55. GUCWA denies the allegations of Paragraph 55.

56. GUCWA denies the allegations of Paragraph 56.

THIRD CAUSE OF ACTION

(Violation of Massachusetts General Laws 93A § 2 - Against All Defendants)

57. GUCWA incorporates by this reference his answers to Paragraphs 1 through 56 above.

58. GUCWA denies the allegations of Paragraph 58.

59. GUCWA denies the allegations of Paragraph 59.

60. GUCWA denies the allegations of Paragraph 60.

FOURTH CAUSE OF ACTION

(Violation of 15 U.S.C. §§ 7704(a)(1),(2),(3) and 7705 - Against All Defendants)

61. GUCWA incorporates by this reference his answers to Paragraphs 1 through 60 above.

62. GUCWA denies the allegations of Paragraph 62.

63. GUCWA denies the allegations of Paragraph 63.

64. GUCWA denies the allegations of Paragraph 64.

65. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 65 and therefore denies them.

66. The allegations of Paragraph 66 are vague and unintelligible. To the extent a response is required, GUCWA denies the allegations of Paragraph 66.

67. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 67 and therefore denies them.

68. GUCWA denies the allegations of Paragraph 68.

FIFTH CAUSE OF ACTION

(Violation of 18 U.S.C. § 1030 - Against All Defendants)

69. GUCWA incorporates by this reference his answers to Paragraphs 1 through 68 above.

70. GUCWA denies the allegations of Paragraph 70.

71. GUCWA denies the allegations of Paragraph 71.

72. GUCWA denies the allegations of Paragraph 72.

73. GUCWA denies the allegations of Paragraph 73.

74. GUCWA denies the allegations of Paragraph 74.

75. GUCWA denies the allegations of Paragraph 75.

PRAYER FOR RELIEF

GUCWA denies that the Plaintiffs are entitled to any of the relief prayed for in the Second Amended Complaint.

AFFIRMATIVE DEFENSES

Without conceding that any of the following necessarily must be pleaded as an affirmative defense, or that any of the following is not already at issue by way of the foregoing denials, and without prejudice to GUCWA's right to plead additional affirmative defenses as discovery into the facts of the matter warrants, GUCWA hereby asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

76. Plaintiffs' Second Amended Complaint is barred in whole or in part by the applicable statutes of limitations, including but not limited to, Section 1030(g) of Title 18 of the United States Code.

SECOND AFFIRMATIVE DEFENSE

77. Plaintiffs were at fault in and about the matters referred to in the Second Amended Complaint and such fault on the part of the Plaintiffs proximately caused and contributed to the

damages complained of, if any there were; and GUCWA further alleges that any fault not attributable to said Plaintiffs was a result of fault on the part of persons and/or entities other than GUCWA.

THIRD AFFIRMATIVE DEFENSE

78. Plaintiffs have failed and neglected to use reasonable care to minimize and mitigate the losses, injury and damage complained of, if any there were.

FOURTH AFFIRMATIVE DEFENSE

79. Plaintiffs' Second Amended Complaint is barred in whole or in part by the doctrine of equitable estoppel.

FIFTH AFFIRMATIVE DEFENSE

80. Plaintiffs' Second Amended Complaint is barred in whole or in part by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

81. Plaintiffs' Second Amended Complaint is barred in whole or in part because this Court lacks personal jurisdiction over one or all of the Defendants.

SEVENTH AFFIRMATIVE DEFENSE

82. Plaintiffs are barred by virtue of Plaintiffs' conduct in causing the damages alleged by Plaintiffs under the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

83. Plaintiffs' damages, if any occurred, were caused and/or brought by intervening and superseding causes, and were not caused by GUCWA.

NINTH AFFIRMATIVE DEFENSE

84. Plaintiffs have no standing to sue as they were not the owner of the property alleged to have been appropriated.

TENTH AFFIRMATIVE DEFENSE

85. Plaintiffs' Second Amended Complaint, in whole or in part, fails to state a cause of action as there is no privity between the parties.

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ELEVENTH AFFIRMATIVE DEFENSE

86. Plaintiffs' Second Amended Complaint is barred in whole or in part by the doctrine of in pari delicto.

TWELFTH AFFIRMATIVE DEFENSE

87. Plaintiffs' Second Amended Complaint, in whole or in part, does not state facts sufficient to constitute a cause of action against GUCWA.

THIRTEENTH AFFIRMATIVE DEFENSE

88. Plaintiffs' Third Cause of Action is barred because the conduct alleged in Plaintiffs' Second Amended Complaint did not occur primarily and substantially in Massachusetts.

WHEREFORE, GUCWA prays for judgment against the Plaintiffs as follows:

(1) that the Plaintiffs take nothing from their Second Amended Complaint;

(2) that this Court dismiss the Plaintiffs' Second Amended Complaint with prejudice;

(3) that this Court award GUCWA his costs and reasonable attorney's fees incurred in defending against this action;

(4) for such other and further relief as the Court deems proper.

Dated: September 7, 2007

DECHERT LLP

By:/s/Valerie M. Wagner
Valerie M. Wagner

Attorneys for Defendant
DAVID GUCWA